

Work Plan

for Pesticide Use Enforcement Activities

by

Department of Pesticide Regulation

and the

County Agricultural Commissioner

for

Sonoma County

Fiscal Year 2006/2007

COUNTY

Name: Lisa Correia
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Dated:

DPR

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Enforcement Work Plan 2006/07

The primary purpose of California's pesticide regulatory program is to regulate, prohibit or ensure proper stewardship of pesticides registered for use to assure:

- Protection of the public and the environment
- A safe workplace for all pesticide handlers and agricultural workers
- Pest control licensee competency and responsibility
- The ongoing availability of pesticides essential to the production of food and fiber

California law designates the California Department of Pesticide Regulation (DPR) as the lead agency responsible for delivering an effective statewide pesticide regulatory program. DPR directly regulates most aspects of this program, however, the Legislature delegated local administration of the pesticide use enforcement program to the county agricultural commissioners.

This work plan outlines the Sonoma County Agricultural Commissioner's Office's commitment to continue a quality program of pesticide use enforcement. In this plan we examine the strengths and weaknesses of our program and commit to continual evaluation and improvement of the quality and effectiveness of our program. Compliance with laws and regulations and protection of people and the environment is our overall goal.

Workload

In 2005/2006 Sonoma County expended 13,071 hours on its Pesticide Use Enforcement (PUE) program. During 2005/2006, 396 inspections were conducted, 240 restricted materials permits were issued, 368 operator identification numbers were issued, 11 investigations were completed, and 430 notices of intent were reviewed.

Resources

Due to limited resources and increased workload in California and Sonoma County, we are unable to predict if we will have the same number of staff hours available for PUE that we have had in the past. In recent years a large number of our staff have been required to concentrate on programs other than PUE, and the same situation could occur in 06/07. We also have two new biologists who joined our staff in the last fiscal year. Our new biologists have obtained their licenses in PUE and are continuing to receive training and work alongside more experienced biologists in order to function independently. The ability of all of our staff to work more efficiently is dependant on the level of knowledge and training provided to them. Much knowledge can be shared in trainings in-house, but we

are dependant on DPR for updates/trainings on new regulations/policies as well as support in developing good inspection skills in our biologists. Several of our staff have not had the opportunity to attend the Basic Inspector Academy due to reductions in its availability in recent years.

In Sonoma County we have fifteen field staff, which includes three deputy agricultural commissioners. Although all of our field staff work in the PUE program, there is no one that works full-time in PUE. All of our field staff have responsibilities in a variety of programs. At times staffing levels and limited resources require us to put a significant amount of time toward programs other than PUE and vice versa. During times of limited resources, we are required to assess what programs are most vital and assign staff accordingly. When this happens, we attempt to minimize any negative impact to all of our programs by ensuring key program elements are achieved. We have designated a program lead person who's responsible for overseeing the program. This lead person provides guidance to staff regarding PUE questions, concerns, changes, etc., and is the primary contact with DPR. In addition, we also have a person designated as the lead person for the Commercial Applicator side of our PUE program. There is ongoing communication between these two lead program people.

We are committed to performing those activities outlined in our core program to the best of our abilities given our staffing levels and resources available. If we are unable to complete all activities outlined, we prioritize our activities based on the protection of people and the environment. We will determine which activities to concentrate on by taking into account past violations, restricted materials, worker safety, and other factors. Our efforts will be concentrated on repeat and serious offenders.

Operator Identification Number (ID number) issuance is especially important in Sonoma County although it is not included in core activities. We issue an average of 566 ID numbers each year. Many of our growers do not use restricted materials but do have employees. While issuing ID numbers we take the opportunity to educate growers about important worker safety regulations (including training, worker right-to-know, etc.), drift prevention, endangered species and other topics that help to ensure the protection of people and the environment. We believe taking the time to educate growers during ID number issuance leads to improvements during Compliance Monitoring and a reduction in illnesses of workers and the public. For these reasons we feel it is essential to take time to educate ID number holders during registration and notification.

Other desirable activities include outreach to growers, licensees, and the public and pesticide use report follow-up. These activities will be performed as staffing and resources allow, and as long as they won't detract from our core program activities and responsibilities.

Restricted Materials Permitting

The use of all pesticides in California is subject to state and federal rules, and misuse of any pesticide is a violation of these laws. California has additional controls on certain pesticides that could be especially hazardous to human health or the environment if they are used improperly. Only certified applicators or trained persons working under their supervision can use these “restricted materials,” and then only with a permit from the County Agricultural Commissioner, who regulates pesticide use locally.

California requires permits for restricted materials so that the commissioner can assess in advance potential effects of the proposed application on health and the environment. Permits are time and site specific, and include use practices to reduce adverse effects as much as possible.

Permit Evaluation-Process Evaluation and Improvement Planning

Our biologists are licensed in pesticide use enforcement, and are knowledgeable concerning local farming practices, specific locations, sensitive sites, hazards, local conditions, restrictions that might apply to the farming operation, the materials used, and associated hazards.

Before a permit is issued, the applicant must prove they are qualified to apply/supervise the application of restricted materials, by providing a Private Applicator’s Certificate or holding a State applicator license. Permits are issued to the operator of the property and are signed by the operator or their authorized representative. Before issuing a permit, the applicant’s file (e.g. previous year’s permit, pesticide use reports, maps, etc.) is reviewed for non-compliances or information that might need to be addressed before the permit is issued. The Biologist issuing the permit reviews any permit conditions with the applicator to discuss specific hazards or concerns that might be associated with the material.

When our office is aware of suitable pesticide alternatives that increase worker safety, lower environmental risk, have comparable efficacy, and are economically similar, our department educates growers regarding the alternatives and encourages the use of these reduced risk materials.

One, two and three-year permits are issued depending on the type of crop grown, previous non-compliances, etc. Permit applicants with a history of non-compliance are issued single year permits. Some restricted materials, such as field fumigants, that have had frequent changes in permit conditions are issued a single year permit to allow for updating permit conditions and to facilitate increased contact with permittees. The Food and Agriculture Code section 14007 and Title 3, California Code of Regulations section 6422 provides guidance for the permit process. All permits expire at the end of a calendar year (December

31). The multi-year permits are broken down by the last name of the applicant (i.e. A-H, I-Q and R-Z). All permits issued and denied are reported to DPR on the PRAMR. Applicants for which permits have been denied are given due process.

Notices of Intent (NOIs) may be submitted by phone, fax, NOI phone answering machine, or in-person. The NOI is recorded on an approved form with the required information and an office log is used to document the NOIs. When a NOI is submitted, it's referred to the district deputy in charge of the area where the application is to take place. All NOIs submitted are reviewed. If the deputy is unavailable, clerical staff records the information and a licensed biologist then reviews the recorded request. A Restricted Material Permit denial log is on file and denials are reported on the Pesticide Regulatory Activities Monthly Report (PRAMR). Generally, NOIs must be submitted at least 24 hours in advance of the application to allow for adequate review of the notice and additional action if necessary. NOIs submitted with less than 24 hours prior notice are approved if the commissioner determines, due to the nature of the commodity or pest problem, effective control cannot be obtained if the application is delayed or that 24 hours are not necessary to adequately evaluate the intended application.

When an NOI is submitted, the NOI is checked to ensure it is current and consistent with the permit. The proposed application site and surrounding sites are reviewed to assess the level of risk and to determine whether there is any mitigation measures necessary to minimize adverse impacts.

All permit files contain maps of the sites on the permit; most sites have GIS maps with aerial photography overlays. All maps include information on adjacent areas. If there are sensitive sites that could be impacted by an application, general and or site specific permit conditions are added to the permit. These conditions are reviewed at the time of permit renewal and if necessary modified to mitigate environmental, health or economic impacts. General permit conditions are reviewed annually or more frequently as necessary.

The goals of our Restricted Materials Permitting Program are to ensure permits are issued as required by the California Food and Agriculture Code, the California Code of Regulations, and guidelines from the California Department of Pesticide Regulation. Additionally, we strive to ensure California Environmental Quality Act Environmental Impact Report equivalency is maintained and people and the environment are protected.

Our Restricted Materials Permitting Program will be reviewed annually or more frequently to ensure that our above stated goals are being accomplished.

Weaknesses

- Most permits have GIS maps linked in the computer, but some don't

- Need to consistently ask permittees if they have considered alternatives/mitigation measures prior to the approval of a NOI for an application of a restricted material

Goals/Objectives

- Issue permits as required by the California Food and Agriculture Code, the California Code of Regulations and guidelines from the California Department of Pesticide Regulation
- Continue to work toward having GIS maps with aerial photography overlay for all permits
- Prior to permit issuance season, review with staff the Restricted Materials and Permitting, Volume 3, of the Pesticide Use Enforcement Program Standards Compendium with staff, stressing CEQA EIR equivalency requirements

Deliverables

- Report all permits issued and denied on PRAMR
- Log all submitted NOIs
- Increase the percentage of sites with GIS maps linked in the computer
- Confirm alternatives were considered by the applicant/permittee prior to NOI approval for an application of a restricted material

Site-Monitoring Plan (Restricted Materials)

The department must review each proposed application of a restricted material to confirm that the application would pose no unacceptable risks or that the permit was conditioned to mitigate identified hazards. When it is determined that only an on-site evaluation will allow an appropriate assessment of risk, the department will conduct a pre-application site inspection.

Site-Monitoring Plan Development

When a permit is applied for, the department reviews the permit application with the applicant to insure that all site maps on the permit are present and current. The department makes periodic inspections to review potential application sites and identify sensitive areas. When NOIs are submitted, a deputy agricultural commissioner or biologist reviews the NOI and the permit file for sensitive sites, and if necessary, performs a pre-application site inspection. If the NOI or the permit indicates special circumstances, such as a school adjacent to an orchard or vineyard, or there are reasons for concern, a pre-application site inspection is performed and concerns and mitigation measures are discussed with the grower. We have a goal to perform pre-application site inspections on at least five percent of restricted material applications. The number of pre-application site inspections is recorded on PRAMR and the inspection forms are maintained in the applicator's file.

There are very few non-agricultural permits issued in Sonoma County. When they are issued, the permit is conditioned, stating there will be at least one pesticide use inspection per year by our office and NOIs are required when restricted materials are used.

Every submitted NOI is reviewed by a deputy agricultural commissioner or a biologist. A high priority for pre-application site inspections is given to soil fumigants. Our goal is 100% pre-application site inspections for soil fumigations due to the potential for human and environmental hazard. High priority is given to 2,4-D for pre-application site inspection due to its potential for environmental hazard. Any restricted material to be applied by air is given high priority for a pre-application site inspection due to the potential of drift. All other NOIs for restricted materials are prioritized for pre-application site inspections depending on material, hazard potential, location of sensitive sites, history of the applicator, and our staffing levels.

Weaknesses

- Some growers do not submit the complete information for NOIs resulting in our need to contact them

Objectives/Goals

- Continue to educate growers to ensure NOIs are completely filled out
- Complete pre-application site inspections on at least 5% of restricted material applications

Deliverables

- All NOIs submitted are recorded on log and PRAMR
- Report number of inspections performed on PRAMR and maintain inspections in files

Compliance Monitoring

Effective and comprehensive compliance monitoring is essential to assuring the safety of pesticide handlers, fieldworkers, the public, and the environment. Compliance monitoring includes pesticide use and records inspections, episode and complaint investigations, and surveillance.

Comprehensive Inspection Program

The county is divided geographically into three districts and by applicator type (agricultural production vs. commercial applicator). There is a Deputy Agricultural Commissioner in charge of each geographical area and a lead person in charge of the commercial applicator team. Biologists are familiar with the areas they work in allowing them to know local conditions, operators,

pesticides used and sensitive sites. The district deputies work closely with the biologists to provide guidance and to ensure proper decisions are being made. In complex situations the chief deputy will often provide input in the decision making process.

Biologists are given a specified number of inspections (goals) to conduct within their district each fiscal year. These inspections can be adjusted during the year to respond to non-compliance trends seen during inspections and if necessary staffing changes. Changes made to the goals will be considered with an emphasis on worker and environmental safety. An inspection tracking form has been created that includes all three districts and the commercial applicator program. The commercial applicator program includes structural pest control businesses and non-production agricultural pest control businesses. There is a tracking form to monitor how many inspections have been completed compared to our goal numbers. Other forms track individual inspections conducted by district per month and give a running total for the month, the year and the total inspection target numbers. The district deputy, at a minimum, reviews all inspections for their geographical area.

We have established goal numbers for inspections to be done during the fiscal year. These numbers may change during the year to respond to compliance issues seen. Our goal numbers are as follows:

<u>Application Inspections</u>	<u>114</u>	<u>Fumigation</u>	<u>5</u>
<u>Agricultural</u>	<u>90</u>	Field & Commodity	5
Owner	45		
PCB	45		
<u>Structural</u>	<u>24</u>	<u>Records Inspections</u>	<u>158</u>
Branch I	14	Owner HQ	93
Branch II	10	PCB HQ	22
		PCB Records	12
		Dealer	10
		Structural HQ	8
		Structural Records	8
<u>Field Worker Safety</u>	<u>20</u>	Advisor	5
		Pre-app at least	5%
<u>Mix/Load</u>	<u>35</u>		
Owner	20		
PCB	15		

The majority of field inspections (use monitoring and fieldworker) are done on a “random” basis, and the grower/business is not given prior notice. Growers/businesses that have a history of non-compliance are targeted for increased surveillance and additional inspections. Sensitive sites are also given increased surveillance (sites near schools, high traffic roadways, and areas receiving a large number of complaints). In addition, aerial applications are given

high priority for inspection due to drift potential. Headquarter inspections are conducted on a rotational basis and decisions to inspect can depend on whether they have employees, restricted materials permits, ID numbers, are a pest control business, or have had non-compliance issues. Headquarter inspections are often used as follow-ups to use monitoring or fieldworker inspection non-compliances. An inspection frequency of a dealer is based on their history of non-compliance and they are inspected no less than every other year.

All inspections are recorded on forms approved by DPR. Biologists are trained to follow the inspection procedures in the Inspection Procedures Manual, and refer to it on a regular basis. The deputies and biologists track inspections that require follow-up action. Inspections are counted on PRAMR, and copies of the inspections will be submitted to DPR along with PRAMR. Compliance actions (Letters of Warning and Notices of Violation) will also be counted on PRAMR.

Our compliance-monitoring program will be evaluated during the year and at least annually (year-end). This review will focus on non-compliances seen, compliance trends, changes in types of applications/pesticides used, policy/regulation changes and any other factors that would indicate a change in focus to the compliance-monitoring plan. The internal goals set for inspections will be adjusted as needed to respond to compliance issues. Compliance issues related to worker, environmental and human safety will take priority. Our compliance-monitoring program will concentrate on these areas if a reduction in staff or staff availability requires a reduction in our goals.

Weaknesses

- In some instances forms are not completely filled out, or are filled out incorrectly due to confusion over interpreting directions in the inspection manual

Goals/Objectives

- Continued education for biologists on how to fill out the inspection forms, and feedback on problems seen with completed inspections
- Adjust headquarters inspections to target those operations with employees and/or restricted materials permits
- Continue to follow-up in a timely manner when non-compliances are seen during inspections
- Perform “tarp check” Branch I Structural inspections to address non-compliances seen last fiscal year

Deliverables

- Inspections performed are recorded on proper forms
- Inspections counted on PRAMR
- Copies of inspections submitted to DPR with PRAMR

Investigation Response and Reporting Improvement

DPR and the county agricultural commissioners have responsibility to investigate episodes that may involve potential or actual human illness or injury, property damage, loss or contamination, and environmental effects alleged to be the result of the use or presence of a pesticide.

Current Program

All investigations that are initiated from a complaint are logged on a Pesticide Complaint Log and assigned to a biologist. The PUE lead person checks the status of these logged investigations for timeliness and completeness. The on-duty biologist will log the incoming complaint then refer the complaint to the appropriate district deputy for that area. Investigations referred from the state go to the PUE lead person who distributes them to the district deputy for that specific area to be investigated. Illness investigations are tracked using the Pesticide Illness Report Log from DPR. There is an internal due date of 60 days for illness investigations. The chief deputy receives the DPR illness database and tracks outstanding illnesses with the district deputies. Extensions on illnesses are requested as needed from our Enforcement Branch Liason. Upon concluding the investigation, an investigative report is submitted to the state, and the investigation is reported on PRAMR.

Overview of a biologist's work is conducted on a regular basis by the district deputies. External training is attended whenever possible depending on availability of staff and budget constraints. The more complicated investigations are typically assigned to the most experienced staff, though we often use this as an opportunity to have less experienced staff involved for training purposes. All investigations are reviewed prior to their submission to DPR. Any inadequacies in an investigation identified by the deputies or DPR will be addressed through training, either internal, or DPR will be asked to provide refresher training.

As outlined in the Investigations Procedures manual, all non-antimicrobial illness investigations will be submitted in the new "narrative" format. We have not previously used this format, and it is anticipated that while this new format will improve our investigations, they will take longer to complete until staff becomes accustomed to it.

Cases are referred to DPR or other appropriate agencies if there are special circumstances (i.e., conflict of interest), or if the scope of the investigation is beyond our county's resources. The county has worked collaboratively with DPR, the Department of Fish and Game, the Regional Water Quality Control Board and County Environmental Health on complex cases over the past several years.

Biologists are trained to follow protocol in the Investigation Procedures manual and the Procedural Guidance manual. Sampling kits are maintained at the Santa Rosa and Sonoma offices to allow prompt response when samples need to be taken. Prior to submittal to DPR, each investigation is reviewed for completeness by the district deputy, the chief deputy, or the staff member in charge of the commercial applicator program.

Every three to four weeks the chief deputy checks the progress and status of investigations against the monthly report that DPR sends to the county. If there is a reason the 120-day timeframe cannot be met for an investigation, the district deputy will complete a Pesticide Illness Investigation Request or email the required information for a Time Extension (PR-ENF-097) and send it to DPR for approval.

All biologists are familiar with the priority criteria and report any situations to the district deputy that may meet this criteria. The district deputy reports this to the chief deputy who contacts the Enforcement Branch Liaison (EBL) for notification. The district and chief deputies track compliance with the 60-day timeframe for the Priority Investigation, and the chief deputy keeps the EBL up-to-date on the progress of the investigation. As outlined in the cooperative agreement between the United States Environmental Protection Agency, Region IX, the California Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association, priority investigations will be initiated within 3 days of referral, a progress report will be submitted to DPR within 15 days, and a completed investigation report within 45 days of completion of the investigation. Our policy is to respond to potential priority situations as quickly as possible, usually within a hour.

Weaknesses

- Completion of Investigations may be delayed due to contacting the injured party multiple times, this appears to be caused by a lack in planning prior to contacting the injured party
- Some investigation reports recently completed could have been written more comprehensively to include all pertinent information

Goals/Objectives

- Submit all investigations to DPR within the 120-day submittal period or request an extension
- Encourage use of investigation plan to help complete investigations in a more timely and comprehensive manner
- Conduct in-house investigations training to address comprehensiveness, timeliness and narrative format for inspections
- Work on developing a template for the new narrative format
- To ensure quality of reports, have PUE program lead person review all illness reports prior to submittal to DPR

Deliverables

- Submit to DPR completed investigations
- Request extension when needed
- Comprehensive investigation reports

Enforcement Response

To realize the full benefits of a comprehensive and effective statewide pesticide regulatory program, DPR and the county agricultural commissioners must apply our enforcement authority fairly, consistently, and swiftly. Our joint enforcement response should emphasize worker and environmental safety and enhance deterrence.

Purpose of Sonoma County's Pesticide Enforcement Program:

- Focus on firm and fair action for pesticide violators
- Prompt response to incidents when laws and regulations have been violated
- Removal of any economic advantage or savings realized by noncompliance
- Consistent and appropriate application of enforcement responses
- Escalation in level of enforcement for repeat violators

Enforcement Response Evaluation

Compliance is tracked electronically and through records kept in individual files. When a non-compliance is found during an inspection, it is noted on the inspection form. The respondent's compliance history is reviewed by checking the information in the database and their file. The deputy, with input from the biologist(s), determines what action should be taken. The level of action is determined according to non-compliance severity and history. The chief deputy and PUE program lead person meet to review non-compliances on approximately a weekly basis. The violation in question is compared to the enforcement response plan, taking into account any previous violations of a similar nature during the past two years. The county will call their EBL for regulatory clarification and guidance as necessary.

The enforcement response plan is followed, and if the decision tree allows a choice, we make the decision based on compliance history, and the nature of the violation (i.e. threatens human health, environment or just paperwork related). The type of action is chosen with sustained compliance as the goal. A documented compliance interview may be used if appropriate. A PUE non-compliance tracking record may be examined for uniformity.

The fine guidelines are followed using Title 3, California Code of Regulations section 6130 definitions. The category is first determined, i.e. Class A, B or C.

After determining the appropriate class from the tree, the circumstances of the violation are weighed for their potential or actual damage to human health or the environment. The respondent's history, intent, and the potential for negligence are also factored in.

A Notice of Proposed Action (NOPA) in a format approved by DPR is sent with evidence attached via certified mail to the respondent. In the NOPA, the respondent is given the opportunity to request a hearing within 20 calendar days, or to stipulate to the violation(s) and pay the fine. A brief description of the violation and appropriate code section is cited in the NOPA and are attached so that the language is consistent with the regulations.

An Administrative Civil Penalty log is kept for proof of due diligence. No action is taken on any violation more than two years after the violation is committed. The log also helps to ensure that the pending action is completed.

Upon completion of enforcement actions, enforcement/compliance action summaries are submitted to DPR with the PRAMR.

The goal of our enforcement program is to ensure a fair, consistent and swift response to non-compliances with future compliance as the end result. We will review our enforcement program periodically and at least annually to determine that our goals are being met.

Weaknesses

- NOPAs may take a long time to write/issue due to heavy workload
- Some biologists have not written NOPAs before, or have not written one in some time, which can delay the process

Goals/Objectives

- Work on creating sample compliance actions that biologists can use to help write Letters of Warning and Notices of Violation
- Give timeframe to complete NOPAs at time of assignment to assist in its timely completion
- Work on creating templates and sample NOPAs that can assist in timely writing of NOPAs
- Hold an in-house training on NOPA writing for staff
- Work on creating sample enforcement actions that biologists use to write NOPAs

Deliverables

- Complete Enforcement/Compliance Action Summaries and submit to DPR at the completion of an enforcement action
- Record all enforcement actions on PRAMR
- Copy of the NOPA is sent to DPR at the time it is mailed to the respondent

Summary

The Sonoma County Agricultural Commissioner's Office is committed to continuing a quality pesticide use enforcement program. We believe that through implementation of this plan and our commitment to continue to evaluate and improve the core components of our work plan (Restricted Materials Permitting, Compliance Monitoring, and Enforcement Response) as well as other desired activities (outreach to pesticide users, ID number issuance, and use report follow-up) we can continue to meet the primary purpose of California's pesticide regulatory program:

- Protection of the public and the environment
- A safe workplace for all pesticide handlers and agricultural workers
- The ongoing availability of pesticides essential to the production of food and fiber